

there was no course of dealing from which authority could be inferred. The officers did not have authority by virtue of their offices. Without action by the corporation specially conferring it, they had no more authority in this respect than any other member of the corporation. P. S., c. 149, ss. 3, 4; 2 Cook Stock & Stockh., ss. 716, 717; *Wuit v. Association*, 66 N. H. 581. Their assurances to the plaintiff, therefore, were not assurances of the corporation and cannot bind it, even if they were sufficient in all other respects to constitute a contract. Neither do they bind the corporation by way of estoppel. One cannot be estopped by an act which he did not do himself nor authorize another to do in his behalf. This is as true of a corporation as of a natural person.

The plaintiff is not at liberty to attack the judgment recovered in the former action on account of the defect therein. He can do that only in a direct proceeding instituted for the purpose. Van Fleet Col. At. 23; *Clough v. Moore*, 63 N. H. 111. In such proceeding the defect might be cured by amendment (*Brown v. West*, 65 N. H. 187); and it probably would be, since it appears that the plaintiff has not suffered any injury from the defect.

Judgment for the defendants.

PARSONS, J., did not sit: the others concurred.

Belknap, }
June, 1896. }

THOMPSON, Assignee, v. TETLEY.

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An assignee in insolvency cannot recover funds which a creditor of the insolvent, without the aid or co-operation of the latter, has obtained in satisfaction of his demand by suit brought in another state prior to the insolvency proceeding.

ASSUMPSIT, by the assignee in insolvency of the Laconia Manufacturing Company, to recover \$457.53. Facts found by the court. December 30, 1893, the Laconia Manufacturing Company, a corporation organized under the laws of this state, was indebted to the defendant, a resident of Laconia, in the sum of \$850 upon an open account, and was insolvent. On that day the defendant, not knowing but having reasonable cause to believe that the company was insolvent, in good faith and with no intent to evade the insolvency law, assigned his account against the company to the A. S. & B. Co. of Massachusetts, as collateral

security for his indebtedness to them, at their request and for the sole purpose of securing the same. January 3, 1894, the A. S. & B. Co. brought suit in Illinois upon the account against the Laconia company, and summoned as trustees their debtors in that state. The trustees disclosed \$531 in their hands belonging to the Laconia company, and March 24, 1894, judgment was rendered against them for that amount, less \$28 for their costs. The judgment was paid to the A. S. & B. Co., and on April 30, 1894, they credited the defendant with \$457.53, the net sum realized by them.

January 29, 1894, a petition in insolvency was filed against the Laconia company. On February 12, it was adjudged insolvent, and February 27, the plaintiff was appointed assignee.

Frank M. Beckford and E. A. & C. B. Hibbard, for the plaintiff.

Jewett & Plummer, for the defendant.

PIKE, J. It is immaterial that the defendant knew or had good reason to believe that the Laconia company was insolvent. Assignments of claims against an insolvent debtor are not within the provisions of the 26th section of the insolvency law. P. S., c. 201, s. 26. That section relates exclusively to transfers of the debtor's property.

Assuming without inquiry that, as the plaintiff claims, the rights of the parties are exactly the same as they would be if the defendant instead of acting through the agency of the A. S. & B. Co. had himself instituted and prosecuted to judgment the suit in Illinois, and had directly and personally received the money, the action cannot be maintained. The satisfaction of a creditor's demand against an insolvent debtor by the operation of the law of this state (*Hurlbutt v. Currier*, ante, p. 94) or of any other state, without the debtor's co-operation or consent, cannot be a wrongful preference or payment. The exercise of a right which the law gives cannot be unlawful. The statute of insolvency has no extra-territorial force. It could neither dissolve the defendant's lien obtained by his action in Illinois upon the Laconia company's property there found, nor afford any objection to the prosecution of the suit to final judgment. *Sturtevant v. Armsby Co.*, 66 N. H. 557, and cases cited; *Barth v. Bachus*, 140 N. Y. 230.

By that judgment the defendant's title to the money is conclusively established. *Lawrence v. Batcheller*, 131 Mass. 504; *Proctor v. Bank*, 152 Mass. 223; *Marine Credit Co. v. Hunter*, L. R. 3 Ch. 479. There is no statute making the title so acquired voidable by the assignee, if such a statute could be constitutionally enacted by a state legislature. The question whether the

prosecution of the Illinois suit might or would upon seasonable application have been enjoined (*Dehon v. Foster*, 4 Allen 545,—*S. C.*, 7 Allen 57; *Cole v. Cunningham*, 133 U. S. 107) is not raised.

Judgment for the defendant.

PARSONS, J., did not sit: the others concurred.

Carroll, }
June, 1896. }

BRYANT *vs.* TAMWORTH.

A finding by the county commissioners adverse to the removal of gates across a highway will not be disturbed if the laying out was legal, or the highway has become such by user.

If gates maintained across a highway constitute an unlawful obstruction, the remedy is by indictment under P. S., c. 77, s. 8.

The laying out of a highway by selectmen is the exercise of a judicial power conferred by statute, and cannot be collaterally impeached.

PETITION, to the county commissioners, for the removal of gates and bars across a highway in Tamworth, laid out by the selectmen, subject to gates, June 5, 1852. The petition alleged that the gates and bars had become unnecessary and inexpedient, that the selectmen, upon petition to remove the gates, refused to do so, and requested the commissioners to lay out the road as an open highway. Upon due notice and hearing, the commissioners reported that in their opinion there was no occasion to remove the gates and that the prayer of the petition should not be granted. The plaintiffs introduced a copy of the record of the laying out in 1852, and claimed that it was illegal as to the laying out of the highway subject to gates and that the commissioners should order them removed. The court ordered judgment on the report of the commissioners, and the plaintiffs excepted.

Josiah H. Hobbs, for the plaintiffs.

Sewall W. Abbott, for the defendants.

BLODGETT, J. The plaintiffs have no case. If the laying out of the highway in 1852, subject to gates, was legal, no error appears in the finding of the commissioners that there is no occasion to remove the gates; and if the laying out was illegal, the finding is in no wise affected, because the highway long since